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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 755

MUNICIPAL INVESTORS ASSOCIATION,
Appellant,

vs.

CITY OF BIRMINGHAM, A MUNICIPAL CORPORATION, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN.

STATEMENT AS TO JURISDICTION.

CLAUDE H. STEVENS,
Counsel for Appellant.

BERRY & STEVENS,
Of Counsel.

INDEX.

Subject Index.

	Page
Statement as to jurisdiction	1
Statutory provisions sustaining jurisdiction	2
Nature of the case	2
Date of application for appeal	3
State statute the validity of which is involved	4
Supplemental statement	13
Exhibit "A"—Opinion of the Supreme Court of Michigan	14

Table of Cases Cited.

American Express Co. v. *Michigan*, 177 U. S. 404	12
Baker v. *State Land Office Board*, 294 Mich. 587	7
Borough of Fort Lee, N. J. v. *United States*, 104 F. (2d) 275	11
Brown-Crummer Inv. Co. v. *Paulter*, 70 F. (2d) 184	11
Hamilton v. *Regents of University of California*, 293 U. S. 245	12
Home Building and Loan Association v. *Blaisdell*, 290 U. S. 398	11
Hubert v. *New Orleans*, 215 U. S. 170	12
Millsaps College v. *City of Jackson*, 275 U. S. 129	12
Memphis v. *United States*, 97 U. S. 293	12
Mobile v. *Watson*, 116 U. S. 289	12
Moore v. *Branch*, 5 Fed. Supp. 1011	11
Mullen Benevolent Corp. v. *United States*, 290 U. S. 89	8
Municipal Investors Assoc. v. *City of Birmingham*, 298 Mich. 314	8
Nelson v. *Pitts*, 53 A. L. R. 1137	11
Scotland County Court v. *Hill*, 140 U. S. 41	12
Seibert v. *Lewis*, 122 U. S. 284	12
Senn v. *Tile Layers Protective Union*, 301 U. S. 468	12
Van Hoffman v. *City of Quincy*, 4 Wall. 535	12
W. B. Worthen Co. v. *Kavanaugh*, 295 U. S. 56	11

STATUTES CITED.

	Page
Charter of the City of Birmingham, Chapter 21, Section 15	5
Michigan Compiled Laws, 1929, Section 3520	8
Michigan Public Acts of 1893, Act No. 206 (Vol. 1, Compiled Laws Mich., 1929, pages 1305-1412; Vol. 5, Compiled Mich. Laws, 1929 (Mason's 1940 Supp.), pages 315-357); Sec. 67 (embodied in Act No. 114 of the Michigan Public Acts of 1937, pages 180-183, and in Act No. 282 of the Michigan Public Acts of 1939, pages 540-545); Sec. 67a (added by Act No. 114 of the Michigan Public Acts of 1937, pages 180-183, and amended by Act No. 282 of the Michigan Public Acts of 1939, pages 540-545)	4
Michigan Public Acts of 1937, Act No. 114, pages 180-183	4
Michigan Public Acts of 1937, Act No. 155, pages 238-244, as amended by Acts Nos. 29, 244 and 329 of the Michigan Public Acts of 1939, pages 49, 453 and 848, respectively, and particularly Sections 9 and 10 of said Act No. 155	4
Michigan Public Acts of 1939, Act No. 282, pages 540-545	4
United States Code, Title 28, Section 344a	2

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 755

MUNICIPAL INVESTORS ASSOCIATION, A MICHIGAN CORPORATION,

Plaintiff and Appellant,

vs.

CITY OF BIRMINGHAM, A MUNICIPAL CORPORATION; THE COMMISSION OF THE CITY OF BIRMINGHAM; AND JOHN E. MARTZ (MAYOR) AND RAY A. PALMER, WILLIAM C. ALLEE, RALPH I. CORYELL, LUTHER HEACOCK, HARRY BISSETT AND WILMER E. MOODY (COMMISSIONERS), MEMBERS OF THE COMMISSION OF THE CITY OF BIRMINGHAM; AND ELMER W. HAACK, ASSESSOR OF THE CITY OF BIRMINGHAM; AND THEIR RESPECTIVE SUCCESSORS IN OFFICE,

Defendants and Appellees,

and

STATE OF MICHIGAN,

Intervening Defendant and Appellee.

STATEMENT OF BASIS OF JURISDICTION.

The appellant in the above entitled cause pursuant to rule No. 12 of the rules of the Supreme Court of the United States, files this its statement showing the basis upon which

it contends that the Supreme Court of the United States has appellate jurisdiction to review on appeal the judgment of the Supreme Court of the State of Michigan in the above entitled cause.

I.

The statute believed to sustain appellate jurisdiction, is Section 344, Subdivision (a) of Title 28—Judicial Code and Judiciary, of the United States Code, as amended, which provides that a final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon appeal.

II.

Appellant filed its petition in the Supreme Court of the State of Michigan on February 7, 1941, alleging that it was the holder of certain bonds issued by the Village (now City) of Birmingham, dated October 1, *1928*, in anticipation of the collection of special assessments made against Special Assessment District No. 146 in said village, and that the original assessments had proven insufficient to pay the outstanding bonds, and praying that a writ of mandamus be issued to the defendants, commanding them to proceed to make an additional assessment against the property in said special assessment district in an amount so that the collections therefrom would be sufficient to pay the principal and interest upon the outstanding bonds issued in anticipation of assessments against said special assessment district. The said cause was heard by the Supreme Court of the State of Michigan upon the said petition of the plaintiff, the answer of the defendants, the answer of the State of Michigan as intervenor, the reply of the plaintiff to said answers,

and the printed briefs and oral arguments of counsel. On the 30th day of June, 1941, two written opinions were filed in said cause by the members of the Supreme Court of the State of Michigan except Justices Butzel and McAllister who did not sit, holding that the plaintiff was not entitled to a writ of mandamus as prayed for in its petition, one of which opinions was written by Justice Chandler and the other by Justice Sharpe. 298 Mich. 314. Copies of said opinions are hereto attached, marked Exhibit A and made a part hereof. That on the 30th day of June, 1941, the following order was entered by the Supreme Court of the State of Michigan, to-wit:

> "This matter having been heard upon the petition of plaintiff, the answer of defendant, the answer of the intervening defendant, the reply of the plaintiff to said answers, and the briefs of counsel for the respective parties hereto, and due consideration thereof having been had by the Court, and it appearing to the Court upon such consideration that the writ of mandamus as prayed for by plaintiff ought not to be granted, it is hereby denied, but without costs to either party."

III.

That the Supreme Court of the State of Michigan is the highest court in the State of Michigan in which a decision in said suit could be had and the order above referred to, entered on the 30th day of June, 1941, was the final judgment of said court in said suit.

IV.

The application for an appeal from the aforesaid judgment of the Supreme Court of the State of Michigan to the Supreme Court of the United States, together with assignment of errors and this jurisdictional statement, was presented on the 24th day of September, 1941, to the Honorable

Edward M. Sharpe, Chief Justice of the Supreme Court of the State of Michigan.

V.

That in said cause there was drawn in question the validity of the following statutes of the State of Michigan; to-wit:

(a) Act No. 206 of the Michigan Public Acts of 1893, as amended (Vol. 1, Compiled Laws Mich. 1929, pages 1305-1412; Vol. 5, Compiled Laws Mich. 1929 (Masons 1940 Supp.), pages 315-357);

(b) The amendments to Section 67 of Act No. 206 of the Michigan Public Acts of 1893, which are embodied in Act No. 114 of the Michigan Public Acts of 1937 (pages 180-183) and in Act No. 282 of the Michigan Public Acts of 1939 (pages 540-545);

(c) Section 67 (a) of Act No. 206 of the Michigan Public Acts of 1893, which section was added by Act No. 114 of the Michigan Public Acts of 1937 (pages 180-183) and amended by Act No. 282 of the Michigan Public Acts of 1939 (pages 540-545);

(d) Act No. 114 of the Michigan Public Acts of 1937 (pages 180-183);

(e) Act No. 282 of the Michigan Public Acts of 1939 (pages 540-545);

(f) Act No. 155 of the Michigan Public Acts of 1937 (pages 238-244), as amended by Acts Nos. 29, 244 and 329 of the Michigan Public Acts of 1939 (pages 49, 453 and 848, respectively), and particularly Sections 9 and 10 of said Act No. 155;

in so far as the said statutes cancel plaintiff's right to a deficiency assessment for the payment of its bonds, on the ground that said statutes are repugnant to the Constitution of the United States as hereinafter more specifically set forth.

VI.

That the bonds issued by the Village of Birmingham in anticipation of the collections of special assessments against

Special Assessment District No. 146, were not the general obligation of said village, the obligation of said village being defined in said bonds in the following language:

> "The full faith and credit of the Village of Birmingham are hereby pledged for the punctual payment of the principal and interest of this bond from the special assessment fund created for the purpose, when the same shall have been collected." (Exhibit A—Plaintiff's petition.).

Section 15 of Chapter 21 of the charter of the Village of Birmingham, which section was in effect at the time of the issuance of the aforesaid bonds, was as follows:

> "Section 15. Should any special assessment prove insufficient to pay for the improvement or work for which it was levied, and the expenses incident thereto, the commission may make an additional pro rata assessment to supply the deficiency; and in case a larger amount shall have been collected than was necessary, the excess shall be refunded ratably to those by whom it was paid." (Paragraph XIII—Plaintiff's petition.)

The original special assessments did not produce sufficient moneys with which to pay all outstanding bonds (paragraph XI—Plaintiff's petition) because the owners of a large portion of the properties in said special assessment district failed to pay the assessments against such properties (Paragraph XII—Plaintiff's petition and Paragraph 4—Defendants' answer).

VII.

The plaintiff in its petition alleged that it was entitled to a deficiency assessment for the payment of its bonds by reason of the aforesaid charter provision. The defendants admitted the factual allegations in plaintiff's petition but alleged that a large percentage of the lots in said special assessment district "were offered for sale at the annual tax

sale for the year 1938 and bid in by the State of Michigan, and were not redeemed, whereby the title to said lots passed to the State of Michigan and said lots were offered for sale in accordance with the provisions of Act No. 155 of the Public Acts of 1937, as amended, and were purchased at public sale by the former owner thereof at the statutory minimum price of twenty-five per cent of the assessed valuation thereof" and "according to the tax laws of the State of Michigan all liens on lots so sold, including all taxes thereon, were cancelled"; and further that the defendants were advised and believed "that by the sale of said property for taxes and the cancellation of tax liens thereon, said lots in the hands of purchasers are not subject to further assessment for the improvement for which such district No. 146 was established and that the city commission has no power to levy such reassessment thereon". (Paragraphs 4, 5 and 6 of Defendant's answer.) Plaintiff, in its reply to the answers of the defendants and the intervening defendant, said in paragraph 5 thereof:

> "(5) Plaintiff, in further reply to the aforementioned answers, says that if Act No. 206 of the Public Acts of 1893, as amended, and Act No. 155 of the Public Acts of 1937, as amended, are to be construed as cancelling plaintiff's right to a reassessment under the provisions of the charter of the Village of Birmingham, then said acts to that extent are unconstitutional in that they impair the obligation of plaintiff's contract in violation of Section 9 of Article II of the Michigan Constitution and Section 10 of Article I of the Federal Constitution, and deprive plaintiff of its property without due process of law in violation of Section 16 of Article II of the Michigan Constitution and the 5th and 14th Amendments to the Federal Constitution."

The constitutional questions so raised in the pleadings were also argued in the original brief in the State Supreme Court

filed by the plaintiff (pages 22-25), in its reply brief to that filed by the defendants (pages 5-34) and in its reply brief to that filed by the Attorney General of the State of Michigan (pages 5-6).

Said constitutional questions were discussed in the opinion in said cause (298 Mich. 314) written by Justice Chandler and concurred in by the remaining five judges sitting in the case, in the manner hereinafter stated. On page 322 of said opinion the court said:

> "Plaintiff says that the additional assessment sought in this case has not yet been levied against the premises and therefore was not a lien when the state acquired title pursuant to the terms of the general tax laws, and hence was not extinguished. A contrary holding, argues plaintiff, would result in the impairment of contractual obligations."

Immediately following the above quotation, the court refers to its opinion in *Baker* v. *State Land Office Board*, 294 Mich. 587, and then states (page 323) that the court in that case "concluded that the statutes in question do not contravene the requirements of the state or federal constitution forbidding the impairment of the obligation of contracts". Said opinion concludes with this statement:

> "In a long and able opinion to which reference has been made the constitutionality of this legislation was upheld, and having determined that the right to make any further special deficiency assessments as well as actual assessments made are totally and completely extinguished and cancelled, it follows that the petitioner's demand for a writ of mandamus should be and is denied." (Page 327.)

VIII.

At the time of the issuance of plaintiff's bonds the general property tax law of Michigan, after providing for the is-

suance of tax deeds to the State of Michigan where property had been bid in to the State at a tax sale and still held by the State after a stated period of time (Section 3520, Michigan Compiled Laws, 1929), stipulated that

> "All taxes charged against such lands in the office of the Auditor General at the time they are deeded to the state shall be cancelled * * * and said lands so deeded as aforesaid shall not be liable to any assessment for any purpose until the same are again sold and deeded by the state, and notice of said sale and deeding given to the county treasurer by the Commissioner of the State Land Office, as hereinafter provided." (Section 3524, Michigan Compiled Laws, 1929.)

The above section has remained on the statute books without amendment since 1899. At the time of the issuance of plaintiff's bonds, the foregoing was the only statutory provision relative to the effect upon outstanding taxes and special assessments, of a tax deed to the State of Michigan.

Inasmuch as the deficiency assessment claimed by plaintiff has not yet been made, it therefore was not charged against the lands in the office of the Auditor General at the time such lands were deeded to the State of Michigan. Neither was such deficiency assessment a lien against such lands. *Mullen Benevolent Corporation* v. *United States*, 290 U. S. 89.

The basis upon which this action was defended and upon which it was decided by the Supreme Court of the State of Michigan, was that the aforementioned statutes adopted in the years 1937 and 1939 cancelled not only those special assessments which were liens against the property but also future deficiency assessments (Paragraphs 4, 5 and 6 of defendants' answer and 298 Mich. 314-330). The particular statutory provisions cited by the defendants and the court as such basis are the following:

(1) The language added to the form of decree of the Circuit Court as set forth in Section 67 of Act No. 206 of the Michigan Public Acts of 1893, as amended by Act No. 114 of the Michigan Public Acts of 1937 and Act No. 282 of the Michigan Public Acts of 1939, said added language being as follows:

> "It is further ordered, adjudged and decreed that title to each parcel of land ordered in this decree to be offered for sale, and which parcel of land is bid in at such sale to the state, shall become absolute in the state of Michigan on the expiration of the period of redemption from such sale, and all taxes and other liens and encumbrances, of whatever kind or nature, cancelled as of such date, unless any said parcel of land shall be redeemed as provided in act number 206 of the public acts of 1893, as amended, or unless an appeal shall have been taken as provided in act number 206 of the public acts of 1893, as amended, or unless any said parcel of land shall be redeemed by any political subdivision of the state as provided in act number 206 of the public acts of 1893, as amended, for redemption by any person."

(2) The provisions of Section 9 of Act No. 155 of the Michigan Public Acts of 1937 and of Section 10 of said act, as amended by Act No. 244 of the Michigan Public Acts of 1939, which in part are as follows:

> "Sec. 9. * * * Any quit claim deed or deeds executed by the board shall convey title in fee to land vested in the board under the provisions of this act, free from any encumbrances, except as herein otherwise provided. * * *"

> "Sec. 10. All moneys received by the state land office board, * * * shall be credited to the general fund of the state, and shall be paid to the several tax assessing units, including municipalities collecting their own delinquent taxes, in proportion to the delinquent

taxes and special assessments of such units cancelled against any description of land sold under the provisions of this act, by the board, any county treasurer or the department of conservation. Such cancelled taxes and special assessments shall be deemed to include all taxes and assessments levied or becoming liens against said lands prior to the vesting of title in the state of Michigan."

After referring to the above acts on pages 323-325 of the opinion in this case as found in 298 Michigan, the court said:

"The clear import of the language of the foregoing amendatory enactments, and the obvious intent and purpose of the legislature to relieve owners from the weight of accumulated obligation, James A. Welch Co., Inc., *v.* State Land Office Board, 295 Mich. 85, must lead one to the conclusion that when title to the lots here in question became absolute in the State of Michigan upon expiration of the period of redemption provided by the tax law free of all taxes and other liens and incumbrances of whatever kind or nature, and future and deficiency as well as past assessments and taxes were cancelled. To hold otherwise would defeat the purpose of this remedial legislation by a narrow and unwarranted construction, and would once again give rise to the vicious circle of assessment based upon inflated valuation; refusal or inability of the owner to pay; followed by a sale of the premises pursuant to the State's sovereign power of enforcing the collection of taxes.

"It should be borne in mind that when the lots in question were sold for delinquencies, upon failure to redeem, the title vested absolutely in the State with power to dispose of them in any way not contrary to the Constitution. Upon resale by the State land office board, a new chain of title originated, evidenced by a quitclaim deed, 'free of any incumbrances.'" (Page 325.)

The means of enforcing an obligation is a part of the obligation itself, and the laws in force at the time and place of making a contract enter into and form a part of it. *Home Building and Loan Association* v. *Blaisdell*, 290 U. S. 398, and the cases therein cited.

At the time the bonds in question were issued the bondholder's remedy to enforce the payment of his bond was not confined alone to the collection of the original assessments but included his right to a deficiency assessment as provided in the village charter. This latter part of his remedy has been destroyed by subsequent legislation as construed by the Supreme Court of the State of Michigan in the present case. The admitted facts disclose that without a deficiency assessment, the outstanding bonds can not be paid (Paragraph XI—Plaintiff's petition. Admitted in Paragraph 1 of Defendants' answer) and there remains no adequate or efficacious means of enforcing plaintiff's bond contract. The courts have held far less drastic changes to be in violation of the constitutional provisions against the impairment of the obligation of contracts. The following are a few of such cases:

W. B. Worthen Co. v. *Kavanaugh*, 295 U. S. 56;
Borough of Fort Lee, N. J., v. *United States* (C. C. A., 3rd Cir.), 104 F. (2d) 275;
Brown-Crummer Inv. Co. v. *Paulter* (C. C. A., 10th Cir.), 70 F. (2d) 184;
Nelson v. *Pitts*, 126 Okla. 191 (53 A. L. R. 1137);
Moore v. *Branch* (Dist. Ct. S. D. Florida—Before Bryan, Circuit Judge, and Ritter and Strum, District Judges), 5 Fed. Supp. 1011.

"The power of taxation conferred by law entered into the obligation of contracts, and any subsequent legislation withdrawing or lessening such power, leaving

creditors without adequate means of satisfaction, impaired the obligation of their contracts within the meaning of the Constitution." *Hubert* v. *New Orleans*, 215 U. S. 170, 178, citing *Memphis* v. *U. S.*, 97 U. S. 293; *Van Hoffman* v. *City of Quincy*, 4 Wall. 535; *Seibert* v. *Lewis*, 122 U. S. 284; *Mobile* v. *Watson*, 116 U. S. 289; *Scotland County Court* v. *Hill*, 140 U. S. 41.

The appellant respectfully represents that the questions involved in its appeal to the Supreme Court of the United States are of a substantial nature. *Hamilton* v. *Regents of University of California*, 293 U. S. 245, 258; *Senn* v. *Tile Layers Protective Union*, 301 U. S. 468, 476-7.

The following are additional authorities sustaining the jurisdiction of the Supreme Court of the United States:

(1) A proceeding for a writ of mandamus is a suit within the meaning of Section 344 of Title 28 of the United States Code.

American Express Company v. *Michigan*, 177 U. S. 404, 406.

(2) The Supreme Court of the United States has jurisdiction where a subsequent State law was challenged as impairing the obligation of a previous contract.

Millsaps College v. *City of Jackson*, 275 U. S. 129, 132.

Therefore, the appellant respectfully submits that the Supreme Court of the United States has jurisdiction of this appeal.

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Dated: September 24, 1941.

Supplemental Statement.

Appellant's petition for appeal, its assignment of errors and its statement of basis of jurisdiction, were presented on the 24th day of September, 1941, to the Honorable Edward M. Sharpe, Chief Justice of the Supreme Court of the State of Michigan, who denied said petition, and on the 26th day of September 1941, appellant's petition for appeal, accompanied by its assignments of errors and statement of basis of jurisdiction, was presented to the Honorable Frank Murphy, Justice of the Supreme Court of the United States.

This supplemental statement is attached to and made a part of the foregoing statement of basis of jurisdiction.

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Dated: September 26, 1941.

EXHIBIT A.

SUPREME COURT, STATE OF MICHIGAN.

MUNICIPAL INVESTORS ASSOCIATION, *Plaintiff*,

vs.

CITY OF BIRMINGHAM, *et al.*, *Defendants*.

Before the Entire Bench—Except Butzel.

CHANDLER, *J.*:

Plaintiff is the holder of six $1,000 bonds numbered 12 to 17, inclusive, which were issued by the Village of Birmingham on October 1, 1928, as part of a series of 14 bonds of like denomination in anticipation of the collection of special assessments to be assessed against special assessment district No. 146, composed of 106 lots to be improved by a street-paving project. The Village of Birmingham reincorporated as the city of Birmingham in 1933, and the city assumed all of the debts and liabilities of the village including these bonds which bore interest at the rate of 5½ per cent, per annum, and matured on October 1st of the year indicated as follows: $4,000—1929; $3,000—1930; $4,000—1931; $3,000—1932; and $3,000—1933. In addition to the bonds which plaintiff holds, there are yet outstanding 3 of 4 bonds which were issued to refund the obligations maturing in 1931.

The special assessment district consisted of 18 lots in Birmingham Lincoln Lots subdivision and 88 lots in Birmingham Lincoln Lots resubdivision. The sum of $14,388.77, later reduced to $12,436.25, was levied against the resubdivision property, but nothing was ever paid thereon. An assessment of $3,405.81, later reduced to $2,942.61, was made against the subdivision premises, but payment was made on only 9 and a fraction lots.

A payment of $100 was made upon plaintiff's bonds on June 19, 1939, and upon the refunded obligations on November 28, 1939, leaving a principal amount of $8,100 due and owing, which with accrued interest to January 1,

1941, constitutes an outstanding indebtedness in excess of $11,800. The amount on hand in the assessment fund is $25.67.

All the lots in both subdivisions upon which assessments were levied but not paid were offered for sale at the annual tax sale for the year 1938 and bid in by the State of Michigan. Title passed to the State upon failure of the owners to exercise their right of redemption.

Alleging that no more than $2,000 will be received upon the assessments already made and moneys allocable to the assessment district by reason of the cancellation of special levies under the provisions of Act No. 155, Pub. Acts 1937, as amended (Comp. Laws Supp. 1940, Sec. 3723-1 to 3723-14, Stat. Ann. Sec. 7.951 et seq.), plaintiff instituted this action for a writ of mandamus to compel defendants to make an additional assessment, a demand for a reassessment of the property in the district in an amount sufficient to pay the principal and interest of the outstanding bonds having been denied by the defendant city commission.

Plaintiff argues that the officials of the city of Birmingham are required by charter to make an additional deficiency levy and that the sale of the property to the State under the general property tax laws and subsequent conveyance by the State under Act No. 155, Pub. Acts 1937, as amended, does not preclude such levy, for such sale affects only existing liens and not additional deficiency liens which were nonexistent at the time of sale. Defendants have assumed that it would have been the duty of the city commission to have levied additional deficiency assessments had there been no tax sale, but vigorously resist this proceeding upon the theory that they have been relieved of such duty and no longer have the power to levy further assessments by reason of the cancellation of taxes and assessments when absolute title to most of the lots in the district vested in the State and did not revive when the lots were repurchased by the former owner in accordance with the terms of Act No. 155, Pub. Acts 1937, subsequently amended by Acts Nos. 29, 244, and 329, Pub. Acts 1939, and the general property tax law, as amended by Acts Nos. 114 and 325, Pub. Acts 1937.

In the recent case of Baker *v.* State Land Office Board, 294 Mich. 587, 592-594, Justice McAllister described the background giving rise to the enactment of the foregoing statutes:

"Between the years 1920 and 1930 speculative activities in real estate in the State, unrestrained by normal caution and on a scale unparalleled, had resulted in platting subdivisions with building lots sold at highly inflated prices. The same exaggeration seeped into farm lands and business properties in cities. During this period municipalities and their officials encouraged the speculative movement by approval, in undeveloped areas, of widespread improvements, including sewer extensions, sidewalks, and pavements. The entire movement was pervaded by an enthusiasm uncolored by moderation. But all of these plans and hopes collapsed under the pitiless and inexorable advance of economic depression, of which this court has on several occasions taken judicial notice * * *."

"The result of this activity was that taxes on excessively high assessments became delinquent and accumulated in amount until they greatly exceeded the assessed valuation. For approximately six years subsequent to 1932, no tax sales were held; moratorium statutes were passed by the legislature embodying waiver of interest and penalty charges and providing for payment of taxes in instalments covering a 10-year period; but such efforts were in vain, and the unpaid taxes accumulated until in some counties they exceeded five times the amount of the assessed valuation of the property. Planning commissions, which occupied themselves with a possible solution of the problem, were appointed by the governor, and concluded that the various plans to remedy the situation had failed to stop the abandonment of tax delinquent land; and legislative committees made exhaustive studies in an effort to devise means of overcoming the rapidly growing peril which was assuming catastrophic form. The result was the enactment of Act No. 155, Pub. Acts 1937, and the amendment of the general property tax law by Acts Nos. 114 and 325, Pub. Acts 1937."

One cannot but conclude, considering the motivating force behind this legislation, that it was the answer of the legislature to the desperate problem of delinquent taxes based upon property valuation having no foundation in fact, and to clear away the debris left by an abnormally high tide of prosperity swept up by an irresistible current of speculation.

"The primary and inducing purpose of the legislation was to secure a portion of the unpaid taxes, rather than nothing, and to restore lands to a tax-paying basis, instead of supinely allowing them to accumulate tax delinquencies with no hope of ever recovering them." Baker *v.* State Land Office Board, *supra*, 606.

Pursuant to legislative intent the Michigan Supreme Court has held that a taxpayer may bring mandamus to compel a city to place on its tax rolls immediately all parcels of land sold under the "scavenger" act even though the State land office board had not as yet executed deeds or contracts to the successful bidder; that such lands are subject to taxation when a bid is accepted and notice of sale given by the agent of the board to the county treasurer who in turn is obliged to notify the proper assessing officers. Wilson *v.* City of Pontiac, 294 Mich. 79.

It is remedial legislation and is to be construed as such. Oakland County Treasurer *v.* Auditor General, 292 Mich. 58.

"In interpreting the act our duty is to ascertain the meaning of the statute, to give it full force and effect, coloring our construction by the purpose of its enactment. The statute is remedial and is entitled to a liberal construction. * * * It is said to be the duty of the court to draw inferences from the evident intent of the legislature, as gathered from a view of the law in its entirety; we must render effectual the specific things which are included in the broad and comprehensive items and purposes of the law." Wilson *v.* City of Pontiac, *supra*, 86.

Plaintiff says that the additional assessment sought in this case has not yet been levied against the premises and therefore was not a lien when the State acquired title pur-

quant to the terms of the general tax laws, and hence was not extinguished. A contrary holding, argues plaintiff, would result in the impairment of contractual obligations. In the Baker case supra, it was claimed that there was nothing in the title of the general property tax law as amended by Act No. 114, Pub. Acts 1937 (Comp. Laws Supp. 1940, Sec. 3459, Stat. Ann. 1940 Cum. Supp. Sec. 7.112),* to indicate that it covered the cancellation of past as well as future taxes and special assessments, or that municipalities which have borrowed in anticipation of the collection of taxes or issued special assessment bonds shall have such taxes and assessments cancelled. A review of the briefs filed in the Baker Case shows that counsel for plaintiff herein filed a brief amicus curiae in which many of the cases relied upon by plaintiff in the instant suit were cited. Notwithstanding the fact that the court had those cases before it, the argument made was repudiated upon the ground that it was unnecessary to include in the title the nature of the interest secured by the purchaser upon the sale, as well as the specific tax incumbrances from which the property was freed in such proceedings, and the court concluded that the statutes in question do not contravene the requirements of the State or Federal Constitution forbidding the impairment of the obligations of contract.*

"It is claimed that the statute destroys vested rights of municipalities to tax liens and assessments already assessed and levied, and destroys property and contract rights of individuals who have purchased bonds under the assumption of their payment through collection of the very taxes and assessments which the act cancels. In addition to our determination as above expressed, it can be said that such purchasers can be assumed to have purchased with knowledge that the lien upon the property securing such taxes and assessments might be displaced." Baker *v.* State Land Office Board, *supra*, 599.

That act, passed the same year as Act No. 155, Pub. Acts 1937, amended section 67 of Act No. 206, Pub. Acts 1893 (1 Comp. Laws 1929, Sec. 3459), and added the following sig-

nificant language to the decree to be entered upon the sale of property for tax delinquencies:

"'It is further ordered, adjudged and decreed that title to each parcel of land ordered in this decree to be offered for sale, and which parcel of land is bid in at such sale to the State, shall become absolute in the State of Michigan on the expiration of the period of redemption from such sale, and all taxes and other liens and incumbrances, of whatever kind or nature * * * cancelled as of such date. * * *'

"Upon the entering of the decree hereinbefore provided for, absolute title to the lands therein shall vest in the State of Michigan as provided in said decree."

Act No. 155, Sec. 9, Pub. Acts 1937, defining the authority of the State land office board to execute deeds and conveyances, reads in part as follows:

"Any quitclaim deed or deeds executed by the board shall convey title in fee to land vested in the board under the provisions of this act, free from any incumbrances, except as herein otherwise provided."

The exception referred to is not pertinent to this discussion.

Act No. 244, Pub. Acts 1939, which amended Act No. 155, Sec. 10, Pub. Acts 1937, provides for the division of the receipt of moneys by the State land office board "in proportion to the delinquent taxes and special assessments of such units cancelled against any description of land sold under the provisions of this act, by the board, any county treasurer, or the department of conservation," and refers to the title acquired by the State in these words:

"Such cancelled taxes and special assessments shall be deemed to include all taxes and assessments levied or becoming liens against said lands prior to the vesting of title in the State of Michigan."

The clear import of the language of the foregoing amendatory enactments, and the obvious intent and purpose of the

legislature to relieve owners from the weight of accumulated obligation, James A. Welch Co., Inc., *v.* State Land Office Board, 295 Mich., 85, must lead one to the conclusion that when title to the lots here in question became absolute in the State of Michigan upon expiration of the period of redemption provided by the tax law free of all taxes and other liens and incumbrances of whatever kind or nature, and future and deficiency as well as past assessments and taxes were cancelled. To hold otherwise would defeat the purpose of this remedial legislation by a narrow and unwarranted construction, and would once again give rise to the vicious circle of assessment based upon inflated valuation; refusal or inability of the owner to pay; followed by a sale of the premises pursuant to the State's sovereign power of enforcing the collection of taxes.

It should be borne in mind that when the lots in question were sold for delinquencies, upon failure to redeem, the title vested absolutely in the State with power to dispose of them in any way not contrary to the Constitution. Upon resale by the State land office board, a new chain of title originated, evidenced by a quitclaim deed, "free of any incumbrances."

Said Justice Cooley in the early case of Sinclair *v.* Learned, 51 Mich. 335, 344:

"Every sale of lands under our tax system is a sale of the complete title; and if legal, all prior titles are cut off by it."

In the more recent case of Krench *v.* State of Michigan, 277 Mich. 168, 179, it is stated:

"The State held title in fee simple. The original title had come to an end and a new chain of title originated with the State. The deed to Lucinda Turner was no part of any statutory proceedings instituted for the purpose of foreclosing the interest of an original owner who had become delinquent in the payment of taxes. This should be kept in mind for it notes the distinction between sales calculated to cut off former ownership and that of vested ownership in the State. In the one instance the statute divests title in one

and vests it in another through tax foreclosure proceedings, while in the other a new title originates by deed from the State. The State, having title in fee, could like any other owner in fee, did with reservation of oil, gas and minerals. It needed no amendment to an inapplicable statute to enable the State, by legislative enactment, to establish a policy with reference to land owned by the State in fee. The deed to Lucinda Turner was not a taxsale deed but one upon bargain, with sale by the State, the owner in fee of the land, and such owner could and did sever the divisible fees."

The rule is reiterated in Rathbun *v.* State of Michigan, 284 Mich. 521, 539, in these words:

"By the foregoing provisions there can be no doubt that after the period for redemption of property bid off to the state for delinquent taxes, the State receives the absolute title to such lands, and in the instant case the State owned the absolute title to the lands in controversy prior to any of the transactions with J. F. Rathbun."

"Inasmuch as the State is the absolute owner of the lands, the legislature is empowered to provide for the sale thereof in any way not prohibited by the Constitution." Baker *v.* State Land Office Board, supra, 602.

See, also, Hoffman *v.* Otto, 277 Mich. 437.

The Legislative body of the State has determined in what manner lands owned by the State shall be sold. In a long and able opinion to which reference has been made the constitutionality of this legislation was upheld, and having determined that the right to make any further special deficiency assessments as well as actual assessments made are totally and completely extinguished and cancelled, it follows that petitioner's demand for a writ of mandamus should be and is denied.

No costs awarded, a public question being involved.

Sharpe, C. J., and Bushnell, Boyles, North, and Wiest, JJ., concurred with Chandler, J.

Sharpe, C. J.: I concur in the result reached by Mr. Justice Chandler. The paramount question involved in this

case may be stated as follows: Do the statutes here involved prevent reassessment on special assessment districts when the land in such districts has been bid in by the State at the tax sale and then resold under the so-called scavenger act?

Act No. 206, Sec. 67, Pub. Acts 1893, as last amended by Act No. 282, Pub. Acts 1939 (Comp. Laws Supp. 1940, Sec. 3459, Stat. Ann. 1940 Cum. Supp. Sec. 7.112), dealing with the decree to be entered upon the sale of property for tax delinquencies, provides:

"'It is further ordered, adjudged and decreed that title to each parcel of land ordered in this decree to be offered for sale, and which parcel of land is bid in at such sale to the State, shall become absolute in the State of Michigan on the expiration of the period of redemption from such sale, and all taxes and other liens and incumbrances, of whatever kind or nature, cancelled as of such date.' * * *

"Upon the entering of the decree hereinbefore provided for, absolute title to the lands therein shall vest in the State of Michigan as provided in said decree."

Act No. 155, Sec. 9, Pub. Acts 1937 (Comp. Laws Supp. 1940, Sec. 3723-9, Stat. Ann. 1940 Cum. Supp. Sec. 7.959), defining the authority of the State land office board to execute deeds and conveyances, reads as follows:

"Any quitclaim deed or deeds executed by the board shall convey title in fee to land vested in the board under the provisions of this act, free from any incumbrances."

Under the above authority, when the land is sold to the State for tax delinquencies, all incumbrances upon the land are discharged; and under the scavenger act, such land owned by the State is sold by it free of all incumbrances. Is the liability to reassessment an incumbrance within the meaning of these statutes? It is the general rule that a special assessment does not become an incumbrance until it has become a lien against the premises. See 72 A. L. R. 302; Jaques *v.* Tomb, 179 Calif. 444 (177 Pac. 280); Gemansky *v.* Fitch, 121 Iowa 186 (96 N. W. 754); Metropolitan Life Ins.

Co. *v.* Union Trust Co., 283 N. Y. 33 (27 N. E. 2d 225, 128 A. L. R. 370); Lindsay *v.* Eastwood, 72 Mich. 336.

In Post *v.* Campau, 42 Mich. 90, we said:

"Anything is an incumbrance which constitutes a burden upon the title; a right of way, Clark *v.* Swift, 3 Metc. (44 Mass.) 390, 392; a condition which may work a forfeiture of the estate, Jenks *v.* Ward, 4 Metc. (45 Mass.) 404, 412; a right to take off timber, Catheart *v.* Bowman, 5 Pa. 317; a right of dower, whether assigned or unassigned, Runnels *v.* Webber, 59 Me. 488. In short, 'every right to, or interest in the land, to the diminution of the value of the land, but consistent with the passage of the fee by the conveyance.' Prescott *v.* Trueman, 4 Mass. 627, 630-(3 Am. Dec. 246)."

Under the above definition of an incumbrance, it would naturally follow that the possibility of reassessment would constitute an incumbrance and thus be cancelled. Moreover, the city of Birmingham has no power or authority to levy a special assessment against the land while it is owned by the State of Michigan.

In People, ex rel. Auditor General, *v.* Ingalls, 238 Mich. 423, 425, we said:

"The doctrine has been pretty well settled in this State and elsewhere that property owned by the State or by the United States is not subject to taxation unless so provided by positive legislation. And municipalities and State agencies are included in this class when their property is used for public purposes. The reason which supports this doctrine is that, if taxes were permitted to be levied against the sovereign, it would be necessary to tax itself in order to raise money to pay over to itself. This would be an idle thing to do. And, besides, it is rather incongruous that the creature should have the right to tax its creator without its consent. Out of this reason has grown an implied presumption that the State is exempt from all taxes unless the one asserting it can point to some legislation in support of it. We are not aware of any law, nor has any been called to our attention, which authorizes the city of Detroit to levy any tax or assessment against State property. Unless it can

do this, its contention must fail. Again, if this tax can be levied against State property, who has authority to pay the tax, and, if it is not paid, who has authority to sell the land to pay the tax?''

The writ is denied.

Bushnell, Boyles, and North, JJ., concurred with Sharpe, C. J. Butzel, J., did not sit. McAllister, J., took no part in this decision.

(7447)